IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1084 of 2005
To
FIRST APPEAL No. 1086 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GROUP GENERAL MANAGER - Appellant(s)
Versus
THAKOR MOHANJI RAYSANGJI & 1 - Defendant(s)

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Appearance :
MR RR MARSHALL for Appellant(s) : 1,
MR AV PRAJAPATI for Respondent No.1
MR KT DAVE AGP for Respondent No. 2

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 10/04/2006

ORAL JUDGMENT

1.These First Appeals have been filed under sec.54 of the Land Acquisition Act, arising out of common judgement and Award passed by the learned Civil Judge (SD), Mehsana dtd.6/11/2004 in Land Reference Case Nos.3663 to 3665 of 2003 (main LAR No.3663/2005) in partly allowing the said References and awarding compensation for the land acquired at Rs.35.50 ps. per sq.mtrs.

2.The lands in question came to be acquired for Oil and Natural Gas Commission (hereinafter referred to as “the ONGC” for short), Mehsana, for which Notification under sec.4 of the Land Acquisition Act came to be published on 2/6/1999 and thereafter Notification under

sec.6 came to be published on 20/7/1999. The Land Acquisition Officer declared Award under sec.11 of the Act on 3/10/2000 and the Land Acquisition Officer fixed the market value at the rate of Rs.6.50 ps. per sq.mtrs. and accordingly awarded compensation. The land owners accepted the amount of compensation as fixed by the Land Acquisition Officer with objection and submitted References under sec.18 of the Land Acquisition Act which were sent to the District Court, Mehsana for its adjudication. The claimant of LAR No.3665 of 2003 came to be examined at Ex.15. The claimants also examined one Pujabhai Ganeshdas Patel at Ex.20. The claimants also relied upon two document, at Ex. Nos.9 and 18 and Award passed in LAQ No.7 of 1998 dtd.3/10/2000 at Ex.4. One Jyotsanaben Dilipkumar Modi was examined by the State Government who was serving as Dy.Mamlatdar. The State Government also examined Babubhai Saduram Prajapati, who

was serving in the office of O.N.G.C. as Superintending Engineer (Mechanical). The claimants also relied upon the judgement delivered by the Extra Assistant Judge, Mehsana in LAR Case Nos.573 to 583 of 1997 dtd.9/8/2002 with respect to the land acquired at village Dedana, which is situated at the distance of 3 Kms. away from the land acquired only, by which, the learned Judge has awarded the compensation by fixing / determining the market value at Rs.20.00 per sq.mtrs. for the acquired land, for which notification u/s.4 of the Land Acquisition Act came to be published on 22/6/1993. On appreciation of evidence and considering the judgement and award passed by the learned Assistant Judge, Mehsana in LAR Nos.573 to 583 of 1997 and considering the sale instance with regard to the land bearing Survey No.697, Ex.Nos.19 and 20, the learned Trial Court determined / fixed the market value of the lands in question at Rs.35.50 per sq.mtrs.

and accordingly partly allowed the References by further directing the appellant to pay all other consequential benefits available under the provisions of the Land Acquisition Act. Being aggrieved and dissatisfied with the judgement and award passed by the learned Civil Judge (SD), Mehsana dtd.6/11/2004, the present First Appeals have been preferred by the appellant under sec.54 of the Land Acquisition Act.

3.Shri RR Marshal, learned advocate appearing on behalf of the appellant has vehemently submitted that the Land Acquisition Officer while declaring Award under sec.11 of the Act has considered in all 11 sale instances inclusive of the sale instance with regard to the land bearing Survey No.697 and taking average of all the 11 sale instances, awarded compensation fixing / determining the market value of the land in question at the rate of

Rs.6.50 per sq.mtrs, and the same was not required to be interfered with by the learned Reference Court. He has also further submitted that so far as the judgement and award passed by the learned Extra Assistant Judge, Mehsana in LAR Nos.573 to 583 of 1997 is concerned, he has submitted that the distance between the Village Rantej and Village Dedana is only 2 Kms. and that without even considering the geographical situation of the land in question, the learned Reference Court ought not to have straightway followed the same. He has also further submitted that even assuming that the sale instance with regard to the land bearing Survey No.697 is comparable then also, the learned trial court has relying upon the sale instance with regard to the land bearing Survey No.697 itself has come to the conclusion that the market value of the acquired land can be considered at Rs.30 per sq.mtrs, and still the learned Reference Court has awarded

compensation determining / fixing the market value of the acquired land at Rs.35.50 ps. per sq.mtrs, which is required to be quashed and set aside and therefore, Shri Marshal learned advocate appearing on behalf of the appellant has requested to consider the market value of the land in question at least Rs.30 per sq.mtrs, and requested to allow the present appeals accordingly.

4.Per Contra, Shri Ashok Prajapati, learned advocate appearing on behalf of the respondent No.1 – original claimants has submitted that the claimants have good case on merits and there are so many reasons on merits to support the judgement and award passed by the learned Reference Court. However, he has made a statement at bar after taking necessary instructions that without entering into the merits of the case and without citing the present case as a precedent, the respondent

herein – original claimants are agreeable to accept the compensation considering the market value of the acquired land at Rs.30 per sq.mtrs, and has requested to modify the judgement and award passed by the learned Reference Court accordingly by concession.

5.Mr.K.T. Dave, learned AGP appearing on behalf of respondent No.2 has requested to pass appropriate order.

6.It is the contention on behalf of the appellant that the learned Reference Court has materially erred in awarding compensation for the acquired land considering the market value of the land in question at Rs.35.50 pr sq.mtrs, and has submitted that the learned Reference Court should have awarded compensation at least at Rs.30 per sq.mtrs, assuming that the sale transaction with regard to the land bearing Survey No.697 is required to be considered,

against which now the learned advocate appearing on behalf of the original claimants has conceded and has given concession that the original claimants are ready and willing to accept the compensation for the acquired land considering the market value of the land in question at Rs.30 per sq.mtrs. However, the learned advocate appearing on behalf of the respondent NO.1 – original claimants has submitted that the same may not be treated as a precedent so that the same may not come in the way of other Land References which are pending before the learned Reference Court in determining the market value on appreciation of evidence in accordance with law and on merits.

7. Considering the concession on behalf of the respondent No.1 – original claimants and even considering the finding given by the learned Reference Court relying upon the sale instance with regard to the sale instance with regard to

the land bearing Survey No.697, this Court is of the opinion that it would be just and proper to award compensation for the acquired land considering the market value of the land in question at Rs.30 per sq.mtrs. However, it is observed that the said market value is determined mainly on the basis of the concession given by the learned advocate appearing on behalf of the respondent No.1 - original claimants and the same may not be treated as a precedent and it is ultimately for the competent Reference Court to determine the market value of the land on appreciation of evidence lead before it, in question in accordance with law and on merits.

8.For the reasons as aforesaid, all these First Appeals are partly allowed. The impugned Judgement and Award passed by the learned Civil Judge (SD), Mehsana in Land Reference Case Nos.3663 to 3665 of 2003 dtd.6/11/2004 is

hereby modified to the extent that instead of Rs.35.50 ps. per sq.mtrs, for the lands in question, the original claimants would be entitled to the compensation for the acquired land at Rs.30 per sq.mtrs. The Rest of the Judgement and Award is hereby confirmed. However, there will be no order as to costs.

(M.R.SHAH,J.)

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